

HONORABLE THOMAS S. ZILLY

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JOSH THOMAS, individually, and on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY,

Defendant.

C20-5785 TSZ

**STIPULATED PROTECTIVE  
ORDER**

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use

1 extends only to the limited information or items that are entitled to confidential  
2 treatment under the applicable legal principles, and it does not presumptively entitle  
3 parties to file confidential information under seal.

4 2. “CONFIDENTIAL” MATERIAL

5 “Confidential” material shall include the following documents and tangible  
6 things produced or otherwise exchanged: Plaintiff’s account records with American  
7 Express, including account statements and other financial information, as well as  
8 correspondence between Plaintiff and American Express; proprietary business  
9 records of American Express, including, but not limited to policies and procedures.

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential  
12 material (as defined above), but also (1) any information copied or extracted from  
13 confidential material; (2) all copies, excerpts, summaries, or compilations of  
14 confidential material; and (3) any testimony, conversations, or presentations by  
15 parties or their counsel that might reveal confidential material.

16 However, the protections conferred by this agreement do not cover  
17 information that is in the public domain or becomes part of the public domain  
18 through trial or otherwise.

19 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20 4.1. Basic Principles. A receiving party may use confidential material that is  
21 disclosed or produced by another party or by a non-party in connection with this  
22 case only for prosecuting, defending, or attempting to settle this litigation.  
23 Confidential material may be disclosed only to the categories of persons and under  
24 the conditions described in this agreement. Confidential material must be stored and  
25 maintained by a receiving party at a location and in a secure manner that ensures  
26 that access is limited to the persons authorized under this agreement.

1           4.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the designating party, a  
3 receiving party may disclose any confidential material only to:

4           (a) the receiving party’s counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the information  
6 for this litigation;

7           (b) the officers, directors, and employees (including in house  
8 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
9 litigation, unless the parties agree that a particular document or material produced is  
10 for Attorney’s Eyes Only and is so designated;

11           (c) experts and consultants to whom disclosure is reasonably  
12 necessary for this litigation and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A);

14           (d) the court, court personnel, and court reporters and their staff;

15           (e) copy or imaging services retained by counsel to assist in the  
16 duplication of confidential material, provided that counsel for the party retaining the  
17 copy or imaging service instructs the service not to disclose any confidential material  
18 to third parties and to immediately return all originals and copies of any confidential  
19 material;

20           (f) during their depositions, witnesses in the action to whom  
21 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
22 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating  
23 party or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
24 depositions that reveal confidential material must be separately bound by the court  
25 reporter and may not be disclosed to anyone except as permitted under this  
26 agreement;

1 (g) the author or recipient of a document containing the information  
2 or a custodian or other person who otherwise possessed or knew the information.

3 4.3. Filing Confidential Material. Before filing confidential material or  
4 discussing or referencing such material in court filings, the filing party shall confer  
5 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to  
6 determine whether the designating party will remove the confidential designation,  
7 whether the document can be redacted, or whether a motion to seal or stipulation  
8 and proposed order is warranted. During the meet and confer process, the  
9 designating party must identify the basis for sealing the specific confidential  
10 information at issue, and the filing party shall include this basis in its motion to seal,  
11 along with any objection to sealing the information at issue. Local Civil Rule 5(g)  
12 sets forth the procedures that must be followed and the standards that will be applied  
13 when a party seeks permission from the court to file material under seal. A party  
14 who seeks to maintain the confidentiality of its information must satisfy the  
15 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the  
16 motion to seal. Failure to satisfy this requirement will result in the motion to seal  
17 being denied, in accordance with the strong presumption of public access to the  
18 Court's files.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1. Exercise of Restraint and Care in Designating Material for Protection.  
21 Each party or non-party that designates information or items for protection under  
22 this agreement must take care to limit any such designation to specific material that  
23 qualifies under the appropriate standards. The designating party must designate for  
24 protection only those parts of material, documents, items, or oral or written  
25 communications that qualify, so that other portions of the material, documents,  
26 items, or communications for which protection is not warranted are not swept  
27 unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber or delay the case development process or to  
4 impose unnecessary expenses and burdens on other parties) expose the designating  
5 party to sanctions.

6 If it comes to a designating party's attention that information or items that it  
7 designated for protection do not qualify for protection, the designating party must  
8 promptly notify all other parties that it is withdrawing the mistaken designation.

9 5.2. Manner and Timing of Designations. Except as otherwise provided in  
10 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
11 stipulated or ordered, disclosure or discovery material that qualifies for protection  
12 under this agreement must be clearly so designated before or when the material is  
13 disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic  
15 documents and deposition exhibits, but excluding transcripts of depositions or other  
16 pretrial or trial proceedings), the designating party must affix the word  
17 "CONFIDENTIAL" to each page that contains confidential material. If only a  
18 portion or portions of the material on a page qualifies for protection, the producing  
19 party also must clearly identify the protected portion(s) (e.g., by making appropriate  
20 markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings:  
22 the parties and any participating non-parties must identify on the record, during the  
23 deposition or other pretrial proceeding, all protected testimony, without prejudice to  
24 their right to so designate other testimony after reviewing the transcript. Any party or  
25 non-party may, within fifteen days after receiving the transcript of the deposition or  
26 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as  
27  
28

1 confidential. If a party or non-party desires to protect confidential information at  
2 trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a  
4 prominent place on the exterior of the container or containers in which the  
5 information or item is stored the word "CONFIDENTIAL." If only a portion or  
6 portions of the information or item warrant protection, the producing party, to the  
7 extent practicable, shall identify the protected portion(s).

8 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
9 failure to designate qualified information or items does not, standing alone, waive  
10 the designating party's right to secure protection under this agreement for such  
11 material. Upon timely correction of a designation, the receiving party must make  
12 reasonable efforts to ensure that the material is treated in accordance with the  
13 provisions of this agreement.

## 14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1. Timing of Challenges. Any party or non-party may challenge a  
16 designation of confidentiality at any time. Unless a prompt challenge to a  
17 designating party's confidentiality designation is necessary to avoid foreseeable,  
18 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
19 delay of the litigation, a party does not waive its right to challenge a confidentiality  
20 designation by electing not to mount a challenge promptly after the original  
21 designation is disclosed.

22 6.2. Meet and Confer. The parties must make every attempt to resolve any  
23 dispute regarding confidential designations without court involvement. Any motion  
24 regarding confidential designations or for a protective order must include a  
25 certification, in the motion or in a declaration or affidavit, that the movant has  
26 engaged in a good faith meet and confer conference with other affected parties in an  
27 effort to resolve the dispute without court action. The certification must list the date,  
28

manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3. Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

#### 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

#### 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating



1 party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
 2 unauthorized copies of the protected material, (c) inform the person or persons to  
 3 whom unauthorized disclosures were made of all the terms of this agreement, and (d)  
 4 request that such person or persons execute the “Acknowledgment and Agreement to  
 5 Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain  
 9 inadvertently produced material is subject to a claim of privilege or other protection,  
 10 the obligations of the receiving parties are those set forth in Federal Rule of Civil  
 11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
 12 may be established in an e-discovery order or agreement that provides for production  
 13 without prior privilege review. The parties agree to the entry of a non-waiver order  
 14 under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each  
 17 receiving party must return all confidential material to the producing party, including  
 18 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon  
 19 appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy  
 21 of all documents filed with the court, trial, deposition, and hearing transcripts,  
 22 correspondence, deposition and trial exhibits, expert reports, attorney work product,  
 23 and consultant and expert work product, even if such materials contain confidential  
 24 material.

25 The confidentiality obligations imposed by this agreement shall remain in  
 26 effect until a designating party agrees otherwise in writing or a court orders  
 27 otherwise.



IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 11/10/2020

/s/ Chris Rosfjord

Chris Rosfjord, WSBA # 37668

Rosfjord Law PLLC

6725 22<sup>nd</sup> Ave., NW

Seattle, WA 98117

Telephone: (206) 321-4849

Email: rosfordlaw@gmail.com

DATED: 11/10/2020

/s/ Stephen J. Newman

Anthony S. Wisen, WSBA # 39656

LAW OFFICES OF ANTHONY S. WISEN,  
PLLC

1752 NW Market Street, #709

Seattle, WA 98107

Telephone: (206) 418-8720

Email: tony@wisenlaw.com

Stephen J. Newman (*pro hac vice*)

STROOCK & STROOCK & LAVAN LLP

2029 Century Park East, 18th Floor

Los Angeles, CA 90067-3086

Telephone: (310) 556-5800

Facsimile: (310) 556-5959

Email: lalalendar@stroock.com

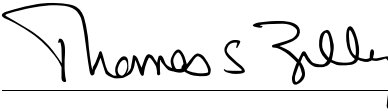
*Attorneys for Defendant*

*AMERICAN EXPRESS COMPANY*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the  
3 production of any documents in this proceeding shall not, for the purposes of this  
4 proceeding or any other federal or state proceeding, constitute a waiver by the  
5 producing party of any privilege applicable to those documents, including the  
6 attorney-client privilege, attorney work-product protection, or any other privilege or  
7 protection recognized by law.

8 Dated this 12th day of November, 2020.

9  
10 

11 Thomas S. Zilly  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the Western  
District of Washington on [date] in the case of \_\_\_\_\_  
[insert formal name of the case and the number and initials assigned to it by the  
court]. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject  
to this Stipulated Protective Order to any person or entity except in strict compliance  
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Western District of Washington for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

1 Presented by:

2 By: /s/ Stephen J. Newman

3  
4 Anthony S. Wisen, WSBA # 39656  
5 LAW OFFICES OF ANTHONY S. WISEN,  
6 PLLC  
7 1752 NW Market Street, #709  
8 Seattle, WA 98107  
9 Telephone: (206) 418-8720  
10 Email: tony@wisenlaw.com

11 Stephen J. Newman (*pro hac vice*)  
12 STROOCK & STROOCK & LAVAN LLP  
13 2029 Century Park East, 18th Floor  
14 Los Angeles, CA 90067-3086  
15 Telephone: (310) 556-5800  
16 Facsimile: (310) 556-5959  
17 Email: lalacalendar@stroock.com

18 *Attorneys for Defendant*  
19 *AMERICAN EXPRESS COMPANY*  
20  
21  
22  
23  
24  
25  
26  
27  
28